

Disciplinary Actions

REPORTED FOR AUGUST

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of July 2002.

Firms Fined, Individuals Sanctioned

The Partners Financial Group, Inc. (CRD #31979, Miami, Florida) and Oilda Caradad Hernandez (CRD #1076766, Registered Principal, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000, jointly and severally, with Hernandez. In addition, Hernandez was suspended from association with any NASD member as a general securities principal for five business days. Without admitting or denying the allegations, the firm and Hernandez consented to the described sanctions and to the entry of findings that they permitted a representative to act in a registered capacity while his registration was inactive. The findings also stated that the firm and Hernandez failed to maintain written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD Rules regarding monitoring compliance with the requirements of the Regulatory Element of continuing education requirements by its registered representatives.

Hernandez' suspension began July 15, 2002, and concluded at the close of business July 19, 2002. (NASD Case #C07020049)

Taglich Brothers, Inc. (CRD #29102, New York, New York) and Michael Nicholas Taglich (CRD #1343730, Registered Principal, Sag Harbor, New York) submitted an Offer of Settlement in which they were censured and fined \$35,000, jointly and severally. In addition, the firm was fined an additional \$5,000 and Taglich was required to requalify by exam as a general securities principal (Series 24) within 90 days of issuance of the Order Accepting the Offer of Settlement. If Taglich fails to requalify, he will be prohibited from serving in a principal capacity with any firm until he successfully requalifies. Without admitting or denying the allegations, the firm and Taglich consented to the described sanctions and to the entry of findings that they failed to disclose to public customers that they had an arrangement whereby the firm's clearing firm would make markets in securities requested by the firm and then pay the firm a portion of the clearing firm's spread earned on some, but not all, trades executed by the clearing firm in these securities. The findings stated that the amount of the spread—which was not disclosed to customers on confirmations—would be split between the firm and the registered representative generating the trade who also received a regular commission. In addition, the firm failed to correct the confirmation slips to reflect the additional compensation, and the confirmations failed to state clearly whether

the firm or the clearing firm was acting in a principal or agency capacity. NASD also found that the firm failed to detect and correct this ambiguity on confirmation slips for these trades. Moreover, NASD found that the firm failed to create and maintain order tickets that reflected the times the orders were received and executed. (NASD Case #CAF010028)

Firms Fined

Alexander, Wescott, & Co., Inc. (CRD #35935, Utica, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$5,000, jointly and severally. The firm was also fined an additional \$5,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the Automated Transaction ServiceSM (ACTSM) transactions in non-Nasdaq and Nasdaq SmallCapSM securities effected by the firm, and failed to record the time of execution or cancellations on sales memoranda for transactions effected by the firm. The findings also stated that the firm, acting through an individual, conducted a securities business while failing to maintain the minimum required net capital. (NASD Case #C10020056)

C.E. Unterberg, Towbin (CRD #24790, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it was a party to a locked or crossed market condition prior to the market opening; received a Trade-or-Move message in each instance through SelectNet;[®] and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. (NASD Case #CMS020110)

Goldman, Sachs & Company (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or asked quotations in the Nasdaq Stock Market that caused a locked or crossed market condition to occur in each instance. (NASD Case #CMS020112)

HD Brous & Co., Inc. (CRD #22062, Great Neck, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to the Order Audit Trail SystemSM (OATSSM) reports with respect to equity

securities traded on the Nasdaq Stock Market that were not in the electronic form prescribed by NASD. The findings also stated that the firm failed to follow written supervisory procedures concerning OATS and thus failed to maintain a system that was reasonably designed to achieve compliance with NASD Marketplace Rule 6955(a). (NASD Case #CMS020108)

J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures within 30 business days of acceptance of the AWC by NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it published quotations for Over-the-Counter (OTC) equity securities, or directly or indirectly submitted such quotations for publication, in a quotation medium, and did not have in its records the documentation required by SEC Rule 15c2-11(a); did not have a reasonable basis under the circumstances for believing the information was accurate in all material respects or that the sources of the information were reliable; and failed to represent a customer's indication of unsolicited interest. The findings also stated that the firm failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable rules and regulations concerning SEC Rule 15c2-11 and NASD Marketplace Rule 6740, including a statement of the steps to be taken to ensure compliance and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. (NASD Case #CMS020103)

J.B. Oxford & Company (CRD #14343, Beverly Hills, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$27,000, and required to pay \$1,018.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale orders in certain securities and failed to make an affirmative determination prior to executing the transactions. The findings also stated that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. NASD also found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. In addition, NASD found that the firm improperly transmitted duplicate execution reports to OATS. (NASD Case #CMS020101)

Ladenburg Capital Management f/k/a GBI Capital Partners, Inc. (CRD #14623, Bethpage, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it used confidentiality clauses in written settlement agreements with public customers that contained language that may have impeded NASD investigations and NASD's prosecution of disciplinary actions. The findings also stated that the firm's sales personnel engaged in improper telemarketing practices in an effort to induce public customers to establish accounts with the firm including harassment, intimidation, and indecorous language. (NASD Case #C10020055)

Lehman Brothers, Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$23,000, and required to pay \$568.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, in transactions for or with a customer, to use reasonable diligence to ascertain the best inter-dealer market; failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; and failed to execute an order fully and promptly. The findings also stated that the firm executed short sale orders in certain securities and failed to maintain a written record of the affirmative determination made for such orders; executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier; failed to disclose on customer confirmations that the disclosed price was an average price; and failed to reference on the required average price legend that details of the transactions would be provided upon request. NASD also found that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. (NASD Case #CMS020113)

Needham & Company, Inc. (CRD #16360, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$67,500, and required to revise the firm's written supervisory procedures with respect to firm quotations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented to the firm at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotations. The findings also stated that the firm's supervisory system failed

to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning firm quotations.

NASD found that the firm, as a market maker in securities, caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation, that locked or crossed another market maker's quotations, without immediately sending through SelectNet to the market maker(s) whose quote(s) it locked or crossed a Trade-or-Move Message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. In addition, the firm was a party to a locked or crossed market condition prior to the market opening, received a Trade-or-Move message in each instance through SelectNet, and, within 30 seconds of receiving such messages, failed to fill the incoming message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. Furthermore, NASD found that the firm failed to display immediately customer limit orders in Nasdaq securities in its published quotation when each such order was at a price that would have improved the firm's bid or offer in each securities, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. (NASD Case #CMS020104)

Pacific Growth Equities, Inc. (CRD #24835, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that orders were presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size, failed to execute the orders upon presentment, and thereby failed to honor its published quotation. (NASD Case #CMS020111)

Pershing Trading Company, L.P. (CRD #36671, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it caused a locked/crossed market condition prior to the market opening by entering a quotation that locked or crossed another market maker's quotations without immediately thereafter sending through SelectNet to the market maker(s) whose quotes it locked or crossed a Trade-or-Move Message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. NASD found that the firm was a party to a locked or crossed market condition prior to the market opening, received a Trade-or-Move Message in each instance

through SelectNet, and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its quotation by an increment that would have unlocked or uncrossed the market. (NASD Case #CMS020102)

Scott & Stringfellow, Inc. (CRD #6255, Richmond, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to pay \$4,861.13, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, in transactions for or with a customer, to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #CMS020106)

Service Asset Management Company (CRD #47157, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move Message in each instance through SelectNet, and, within 30 seconds of receiving such message, failed to fill the incoming Trade-or-Move Message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. (NASD Case #CMS020115)

Trident Securities, Inc. (CRD #566, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise the firm's written supervisory procedures with respect to firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute the orders presented to the firm at its published bid or offer in an amount up to its published quotation size upon presentment, and thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities rules and regulations concerning firm quote compliance. (NASD Case #CMS020100)

WM Financial Services, Inc. (CRD #599, Irvine, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to disclose customer complaints and settlements on the Forms U-4 and/or Forms U-5 of registered representatives as required. The findings also stated that the firm failed to establish, maintain, and

enforce written procedures to ensure that the firm made required disclosures on Forms U-4 and U-5 concerning customer complaints and settlements. (NASD Case #C02020036)

Individuals Barred or Suspended

Seymour Isaac Abramowitz a/k/a Seymour Abrams (CRD #4412506, Associated Person, Tarzana, California), submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Abramowitz consented to the described sanction and to the entry of findings that he willfully misrepresented material facts on a Form U-4. (NASD Case #C02020033)

Kevin Eric Aizenshtat (CRD #2860587, Registered Representative, Naples, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for five business days. The fine must be paid before Aizenshtat reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. In light of Aizenshtat's payment of \$28,105.75 in restitution to the customer, no additional monetary sanction has been imposed. Without admitting or denying the allegations, Aizenshtat consented to the described sanctions and to the entry of findings that he exercised discretionary authority in the account of a public customer, pursuant to oral authority granted by the customer, without having that authority reduced to writing and without having the account accepted in writing by his member firm. The findings also stated that Aizenshtat negligently misrepresented that a bond purchased by a client was returning principal with its interest payments when, in fact, it was not, causing the client to sell the bond.

Aizenshtat's suspension began August 5, 2002, and concluded at the close of business August 9, 2002. (NASD Case #C07020056)

Brent Allen Atwood (CRD #2540982, Registered Principal, Durham, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Atwood consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing written notice to, or obtaining written approval from, his member firm. The findings stated that Atwood received \$20,000 from public customers to purchase Class A shares in a security that Atwood claimed to own although he did not, and failed to obtain such shares to fulfill his agreement with the customers. NASD found that Atwood made improper use of these funds or converted the funds to his own use before repaying \$19,500 to the customers. (NASD Case #C07020047)

Robert Wells Bailey (CRD #1622898, Registered Representative, Wayne, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 40 days. The fine must be paid before Bailey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bailey consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Bailey's suspension began July 15, 2002, and will conclude at the close of business August 23, 2002. (NASD Case #C8A020041)

Robert Joseph Borson (CRD #2828890, Registered Representative, Fullerton, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borson consented to the described sanction and to the entry of findings that he received a check for \$2,000 from a public customer for investment purposes payable to Borson's member firm. The findings stated that Borson failed to apply the customer funds as instructed and, without the customer's authorization or consent, altered the payee line of the customer check to read "Robert Borson" and inserted the customer's initials above to make it appear as though the customer had authorized the alteration. In addition, the findings stated that Borson, without the customer's authorization or consent, added the notation, "Given to Rob Borson" next to the customer's notation on the memo portion of the check, to make it appear as though Borson was the authorized payee on the customer check. The findings further stated that after altering the customer check, Borson endorsed and deposited it into his personal checking account and held the funds for a period of time, without the customer's authorization or consent. (NASD Case #C02020022)

Donald Christopher Bowers (CRD #4291781, Associated Person, Long Beach, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bowers failed to disclose material information on his Form U-4 and failed to respond to NASD requests for information. (NASD Case #C02020001)

Scott Michael Brown (CRD #2642492, Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000 and suspended from association with any NASD member in any capacity for 12 months. The fine must be paid before Brown reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Brown further agrees to provide additional testimony to NASD and to appear personally and testify truthfully and completely in connection with its investigation or any disciplinary hearing conducted in connection with the

investigation. If Brown fails to appear or to testify truthfully and completely, he consents to a sanction including a bar from the securities industry. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to provide on-the-record testimony.

Brown's suspension began April 1, 2002, and will conclude at the close of business March 31, 2003. (NASD Case #CAF020010)

Arthur Kenny Bryant (CRD #1827620, Registered Representative, Edmonds, Washington) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bryant obtained a \$4,000 check drawn on a public customer's account at his member firm, altered the check to make himself the payee, deposited the check in the net amount of \$3,900 into his personal credit union savings account, and later withdrew the funds for his own purposes, thereby converting the funds to his own use. (NASD Case #C3B020002)

Allen Gene Davis (CRD #2783495, Registered Representative, Deer Lodge, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Davis consented to the described sanction and to the entry of findings that he received \$3,760.97 in checks from a public customer for investment purposes. The findings stated that Davis cashed the checks and neglected to purchase securities for the account of the public customer before remitting the funds to his member firm after a period of time. (NASD Case #C05020031)

Thomas Rayvon Daye (CRD #2596342, Registered Representative, Raleigh, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Daye consented to the described sanction and to the entry of findings that he submitted wire transfer instructions to his member firm, causing \$180,000 in funds to be transferred from client accounts to a bank account under his control without the authorization of the clients. The findings also stated that Daye failed to respond to NASD requests for information. (NASD Case #C07020055)

Paul DePasquale (CRD #2832113, Registered Representative, Miami Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, DePasquale consented to the described sanctions and to the entry of findings that he acted in a registered capacity while his registration was inactive. In addition, NASD found that DePasquale provided false testimony during an NASD on-the-record interview.

DePasquale's suspension began July 15, 2002, and will conclude October 12, 2002. (NASD Case #C07020050)

Michael Scott Dreher (CRD #2701679, Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dreher consented to the described sanction and to the entry of findings that he forged the name of a manager of his member firm on a letter sent to a prospective customer. (NASD Case #C3A020027)

Ernest Yoshitsugo Fukumoto (CRD #215511, Registered Representative, Pasadena, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fukumoto consented to the described sanction and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written notice to, and approval from, his member firm. (NASD Case #C02020029)

Roland Raymond Gaboury (CRD #1284789, Registered Representative, West Brookfield, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gaboury consented to the described sanction and to the entry of findings that a public customer provided him with \$20,000 to invest in a high-yield account that Gaboury said would provide a fixed rate of return, failed to invest the customer's funds as directed, and, instead, misused the funds by purchasing for the customer a security offered by a friend. The findings also stated that Gaboury engaged in a private securities transaction without prior written notice to, or approval from, his member firm. NASD found that Gaboury created and sent fictitious account statements to the public customer that falsely indicated that the \$20,000 investment, plus accrued interest, was located in a firm account. In addition, NASD found that Gaboury had learned that the outside investment was a fraud and that someone had absconded with the customer's funds, but instead of informing the customer, Gaboury continued to create and send fictitious reports falsely indicating that the investment was at the firm and continuing to accrue interest. Moreover, NASD found that Gaboury created and provided to the customer a letter on firm stationery showing a fictitious policy number and account value for the customer's \$20,000 investment and forged a firm employee's signature on this document. (NASD Case #C11020025)

Matthew James Gervasio (CRD #2844164, Registered Representative, West Islip, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gervasio received checks and silver bars from public customers for deposit in their accounts and in a

safe deposit box, respectively, at his member firm. The findings stated that Gervasio converted the checks and bars to his personal use and benefit without the authorization of the customers. NASD also found that Gervasio failed to respond to NASD requests for information. (NASD Case #C10010157)

Foster J. Gibbons (CRD #2766670, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gibbons consented to the described sanction and to the entry of findings that a member firm, acting through Gibbons, failed to implement, maintain, and enforce a reasonable supervisory system that would have enabled the firm to comply effectively with NASD Rules and federal securities laws and regulations by preventing and detecting violations by the firm regarding unauthorized transactions in the accounts of public customers; churning of accounts of public customers; and charging unreasonable, unfair, and excessive commissions in transactions effected on behalf of public customers. (NASD Case #C10020057)

Edward Hossein Haghani (CRD #3055635, Associated Person, King of Prussia, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Haghani caused an unauthorized withdrawal of \$650 from the bank account of a public customer for his own personal financial benefit and failed to respond to NASD requests for information. (NASD Case #C9A020003)

Kim Ione Halliburton (CRD #1058579, Registered Principal, Dunedin, Florida) and Carl Dominic Martellaro (CRD #320959, Registered Principal, Chico, California) submitted a Letter of Acceptance, Waiver, and Consent in which Halliburton was fined \$7,500, jointly and severally, suspended from association with any NASD member in a supervisory capacity for 90 days, and suspended from association with any NASD member as a financial and operations principal (FINOP) for 30 days. Martellaro was fined \$10,000 and barred from association with any NASD member in any principal or proprietary capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a member firm, acting through Halliburton, failed to maintain properly adequate net capital while conducting a securities business. The findings also stated that a member firm, acting through Halliburton, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with rules and regulations applicable to sales practices by registered representatives, and failed to supervise a branch office. NASD also found that Martellaro acted in a principal capacity while failing to be registered with NASD in any capacity, and the member firm, acting through Halliburton, permitted Martellaro to act in a principal capacity without registration as such with NASD.

Halliburton's suspension in a supervisory capacity began August 5, 2002, and will conclude November 2, 2002. Halliburton's suspension in a FINOP capacity began August 5, 2002, and will conclude at the close of business September 3, 2002. (NASD Case #C07020053)

Henry Joseph Jedziniak (CRD #1731003, Registered Representative, Bernardsville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jedziniak consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #C9B020044)

Tameka Darsaleik Johnson (CRD #2828002, Registered Representative, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Johnson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that she willfully failed to amend her Form U-4 to disclose a material fact.

Johnson's suspension began July 15, 2002, and will conclude at the close of business July 14, 2003. (NASD Case #C9A020026)

Daniel Steven Kippert (CRD #2327018, Registered Representative, Ogden, Utah) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kippert instructed a member firm sales assistant to transfer \$1,700 from a public customer's account maintained at his member firm to his personal bank account without the prior knowledge, authorization, or consent of the public customer. (NASD Case #C3A020011)

Victor Kozirovsky (CRD #2841043, Registered Representative, Woodmere, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for four months. In light of the financial status of Kozirovsky, no monetary sanctions have been imposed. Without admitting or denying the allegations, Kozirovsky consented to the described sanction and to the entry of findings that he caused purchases of stock during the initial public offering of a security for persons who had not agreed to purchase stock or to open accounts with his member firm.

Kozirovsky's suspension began July 15, 2002, and will conclude at the close of business November 14, 2002. (NASD Case #CAF020004)

Gene Louis Lancour (CRD #3164906, Registered Representative, Hampton, Virginia) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lancour consented to the described sanction and to the entry of findings that he received a \$2,400.05 check from a public customer to be used for investment purposes, cashed the check, and failed to make the investment as directed. The findings also stated that Lancour held the customer's funds until he returned them with interest, but misused them in that he failed to make the investment as directed and held the funds for over two months before returning them to the customer. (NASD Case #C07020029)

Rebecca English Lantz (CRD #4250342, Registered Representative, Youngsville, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lantz consented to the described sanction and to the entry of findings that she processed credit entries totaling \$1,500 to her personal checking account, thereby converting the funds to her own use and benefit. The findings also stated that Lantz failed to respond to NASD requests for information. (NASD Case #C05020029)

Gregory Scott Long (CRD #2495123, Registered Representative, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Long consented to the described sanction and to the entry of findings that he made recommendations to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer in light of the size and nature of the transactions, and the facts disclosed concerning the customer's other securities holdings, financial situation, investment objectives, circumstances, and needs.

Long's suspension began August 5, 2002, and will conclude at the close of business August 9, 2002. (NASD Case #C02020034)

James Hugh Long (CRD #1790073, Registered Principal, Plant City, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 18 months. In light of the financial status of Long, no monetary sanctions have been imposed. Without admitting or denying the allegations, Long consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Long's suspension began July 15, 2002, and will conclude at the close of business January 14, 2003. (NASD Case #C07020052)

Robert David Luecke (CRD #1999585, Registered Principal, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Luecke consented to the described sanctions and to the entry of findings that broker/dealers he owned and operated posted misleading information on Web sites and made claims and comparisons that were unwarranted, exaggerated, and without support. The findings also stated that Luecke, through a Web site, promoted day trading without sufficiently disclosing the risks of that type of trading strategy, and discussed after-hours trading without sufficiently disclosing the risks of after-hours trading.

Luecke's suspension began July 15, 2002, and concluded on July 28, 2002; it will begin again August 19, 2002, and conclude at the close of business September 3, 2002. (NASD Case #CAF020019)

Tracie Lynn Mason (CRD #4041253, Registered Representative, Minot, North Dakota) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mason consented to the described sanction and to the entry of findings that she altered incoming and outgoing insurance-related checks and converted the funds to her own personal use and benefit. (NASD Case #C04020017)

Jeffrey Henry Massey (CRD #2395900, Registered Representative, Cumberland, Rhode Island) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for nine months and required to disgorge \$20,000 in partial restitution to public customers. Restitution must be paid before Massey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. In light of the financial status of Massey, no monetary sanction has been imposed. Without admitting or denying the allegations, Massey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Massey's suspension began July 15, 2002, and will conclude at the close of business April 14, 2003. (NASD Case #C11020026)

Jack Alan Moloney (CRD #2190471, Registered Principal, Hoboken, New Jersey) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year and required to pay \$20,000 in disgorgement of commissions in partial restitution to public customers. In the light of the financial status of Moloney, no fine has been imposed and the restitution amount was reduced. Restitution must be paid before Moloney reassociates

with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Moloney consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Moloney's suspension began August 5, 2002, and will conclude at the close of business August 4, 2003. (NASD Case #C9B020010)

William Benjamin Muller Jr. (CRD #1892075, Registered Representative, Novi, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Muller failed to disclose a material fact on his Form U-4. NASD also found that Muller failed to respond to requests for information. (NASD Case #C8A010091)

David Bruce Novak (CRD #2700222, Registered Principal, Winnetka, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay \$96,898, plus interest, in restitution to a public customer. The restitution must be paid before Novak reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Novak consented to the described sanctions and to the entry of findings that he made improper use of approximately \$96,898 from the securities accounts of a public customer. The findings also stated that Novak failed to respond to an NASD request for information. (NASD Case #C8A020035)

Fred John Pascaris (CRD #2213626, Registered Representative, Dearborn Heights, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Pascaris engaged in private securities transactions, for compensation, and failed to provide written notice to, and obtain prior written authorization from, his member firm to engage in the private securities transactions. The findings also stated that Pascaris willfully failed to timely update his Form U-4. (NASD Case #C8A010096)

Howard Charles Penn (CRD #811882, Registered Principal, Briarcliff Manor, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for 10 business days, and required to disgorge \$6,270 in commissions received in partial restitution to a public customer. The restitution must be paid before Penn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Penn consented to the described sanctions and to the entry of findings that he recommended and purchased limited partnership interests in businesses totaling approximately \$100,000 for a public customer without reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the

basis of the customer's financial situation, investment objectives, and needs.

Penn's suspension began August 5, 2002, and will conclude at the close of business August 16, 2002. (NASD Case #C11020027)

James Patrick Philbin (CRD #721998, Registered Representative, Dunellen, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to disgorge \$25,000 in commissions in partial restitution to public customers. The fine and restitution must be paid before Philbin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Philbin consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Philbin's suspension began August 5, 2002, and will conclude at the close of business February 4, 2003. (NASD Case #C9B020045)

Paul Edison Renfroe, Jr. (CRD #2557149, Registered Representative, Collierville, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Renfroe consented to the described sanction and to the entry of findings that he received \$84,000 from a public customer for investment purposes, deposited the funds into his personal checking account, purchased contracts totaling \$80,000 in his own name, returned \$4,000 to the customer and, at a later date, transferred ownership of the contracts to the customer. The findings also stated that Renfroe participated in private securities transactions without providing prior written notice to his member firm. (NASD Case #C05020030)

James Eric Smartt (CRD #4195655, Associated Person, Inglewood, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smartt consented to the described sanction and to the entry of findings that he received and converted a \$2,100 check payable to his member firm's proprietary account. The findings also stated that Smartt received and converted a \$3,000 check payable to a customer's investment account. (NASD Case #C02020035)

Patrick Hoell Smith (CRD #1821303, Registered Principal, Gastonia, North Carolina) was fined \$30,000, suspended from association with any NASD member in a general securities principal and FINOP capacities for two years, suspended from association with any NASD member in any capacity for three months, and ordered to requalify by exam as a general securities

principal and FINOP before he resumes those responsibilities. For one year following Smith's association with any NASD member, his firm shall review and pre-approve all transactions for his personal accounts (including all accounts in which he has a beneficial interest), and require that he have sufficient funds in his accounts to settle all transactions before they are executed. The sanctions were based on findings that Smith effected purchases of securities in his personal securities account for a total purchase price of \$11,593,471.98, running the account as if it were a proprietary trading account without paying for the purchases as required by Regulation T. The findings also stated that Smith netted out his short-term positions against other trades in his account because his member firm was self-clearing and his strategy was to sell each position before payment was due. NASD also found that Smith, as FINOP for his firm, arranged for extensions of credit because he was unable to pay for the purchases effected in his account, in violation of Regulation X.

Smith's suspension as a general securities principal and FINOP began July 1, 2002, and will conclude at the close of business June 30, 2004. Smith's suspension in any capacity began July 1, 2002, and will conclude at the close of business September 30, 2002. (NASD Case #C07010095)

Martin Ronald Sprenger (CRD #2200424, Registered Representative, Omaha, Nebraska) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sprenger willfully failed to disclose material facts on his Form U-4. The findings also stated that Sprenger failed to respond to NASD requests for information. (NASD Case #C04010030)

Clarence Joe Susaeta (CRD #837418, Registered Principal, Park City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity, with a right to reapply to become associated with an NASD member after three years from the date the AWC becomes final. Without admitting or denying the allegations, Susaeta consented to the described sanction and to the entry of findings that he received \$46,221 from a public customer, deposited the funds into a bank account he controlled, and paid the premiums on insurance policies owned by the customer in the total amount of \$54,134. The findings also stated that Susaeta's failure to segregate such funds from his own funds constituted an improper use of public customer funds. (NASD Case #C3A020028)

Dave Hung Trinh (CRD #2916910, Registered Representative, Renton, Washington) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trinh consented to the described sanction and to the entry of findings that he affixed the signature of a public customer to an account application to open a securities account at a member firm other than his own without the customer's

knowledge or consent, and provided his telephone number and e-mail address, falsely representing that they were the customer's telephone number and e-mail address. The findings also stated that Trinh affixed the customer's signature to a margin agreement for the customer's account without the customer's knowledge or consent. In addition, Trinh affixed the customer's signature to a memorandum to the other member firm requesting the address on the account be changed, without the customer's knowledge or consent, and provided his own home address as the new address in the memorandum.

NASD also found that Trinh received a \$24,916.50 check from a public customer to purchase shares of stock; deposited the funds in a money market account linked to the customer's account but failed to purchase the stock; affixed the customer's signature to a \$24,000 check drawn on the money market account payable to Trinh without the customer's knowledge or consent; and deposited the check in his own checking account, thereby converting \$24,000 to his own use and benefit. Furthermore, NASD found that Trinh received a \$423 check from his member firm, payable to the employer of a public customer, to refund an excess contribution to the customer's qualified variable annuity contract; endorsed the check; and deposited it in his own checking account, thereby converting \$423 to his own use and benefit. Moreover, the findings stated that Trinh made false statements in response to an NASD request for information and delivered a false document concealing his conversion of \$423 to NASD to impede the investigation. (NASD Case #C3B020009)

Christopher Thomas Votta (CRD #2760656, Registered Representative, Ronkonkoma, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,222.50, including disgorgement of \$222.50 in commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Votta consented to the described sanctions and to the entry of findings that he effected an unauthorized sale transaction in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Votta's suspension began July 15, 2002, and concluded at the close of business July 26, 2002. (NASD Case #C10020053)

Charles Eugene Williams (CRD #727212, Registered Principal, Macy, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for three months, and required to disgorge \$4,080 in commissions to public customers. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving written approval from, his member firm.

Williams' suspension began July 1, 2002, and will conclude at the close of business September 30, 2002. (NASD Case #C8A020043)

Mimy Wong (CRD #2284425, Registered Principal, La Canada, California) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$9,125 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Wong consented to the described sanctions and to the entry of findings that she participated in private securities transactions without providing prior written notice to her member firm.

Wong's suspension began August 5, 2002, and will conclude at the close of business August 16, 2002. (NASD Case #C02020031)

Decision Issued

The following default decision has been issued by the DBCC or the Office of Hearing Officers, and has been appealed to or called for review by the NAC as of July 5, 2002. The findings and sanctions imposed in the default decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Juan Gascot-Jimenez (CRD #1385156, Registered Representative, Rio Piedras, Puerto Rico) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gascot-Jimenez possessed and reviewed unauthorized materials during his Series 7 qualification exam.

Gascot-Jimenez has appealed this decision to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C07020018)

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Justin Edward Apgar (CRD #2770606, Registered Representative, Wall Township, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended to a public customer that he invest money in a mutual fund rather than keeping the money in certificates of

deposit. The complaint also alleges that Apgar knowingly or recklessly guaranteed the customer against loss and knowingly or recklessly informed the customer that the fund would pay a guaranteed rate. In addition, the complaint alleges that Apgar forged, or caused to be forged, the signature of his supervisor on a letter sent to the customer, without the supervisor's knowledge or consent. (NASD Case #C9B020046)

John Oliver Edwards (CRD #1627812, Registered Representative, Cincinnati, Ohio) was named as a respondent in an NASD complaint alleging that he participated in private securities transactions for compensation without prior written notice to, or approval from, his firm. The complaint also alleges that Edwards, acting in his capacity as a trustee, caused a member firm to liquidate portions of the trusts' mutual fund investments and deliver the proceeds totaling approximately \$1,149,500 to him. The complaint further alleges that Edwards deposited these funds into a bank account that he controlled, and made improper use of approximately \$1,043,170 of customer funds for his personal benefit. In addition, the complaint alleges that Edwards failed to notify his member firm that he had a financial benefit in an outside securities account maintained in the name of a trust at a member firm, and failed to notify the member firm carrying the account of his association with his member firm. Furthermore, the complaint alleges that Edwards completed and provided to his member firm a firm document in which he falsely represented that he did not have any securities accounts at a broker/dealer other than his member firm when he knew, or should have known, that his financial interest and authority to direct the execution of transactions in the outside account was required to be disclosed to his member firm. The complaint also alleges that Edwards failed to respond, or respond completely, to NASD requests for information. (NASD Case #C3A020029)

Edward Paul Galvan (CRD #2124116, Registered Principal, Addison, Texas) was named as a respondent in an NASD complaint alleging that he executed an unauthorized transaction in the account of a public customer for \$5,393.75. The complaint also alleges that, without the prior knowledge or consent of his member firm, Galvan deposited \$2,000 into the public customer's account in partial payment for the loss incurred as a result of the unauthorized transaction. In addition, the complaint alleges that Galvan failed to respond to NASD requests for information. (NASD Case #C05020032)

Daniel Richard Schmidt (CRD #2652062, Registered Representative, Santa Barbara, California) was named as a respondent in an NASD complaint alleging that he signed public customers' names to Contribution Change Forms (CCF) without their authorization, knowledge, or consent, and submitted them to his member firm requesting an increase in the customer's monthly payroll deductions for which he received \$520 in commission advances. The proposed payroll deduction increases

were not effectuated because Schmidt failed to submit salary reduction agreements (SRAs) along with the forged CCFs. (NASD Case #C02020030)

Craig Frank Wisbiski (CRD #2711742, Registered Supervisor, Williamston, Michigan) was named as a respondent in an NASD complaint alleging that he caused at least \$160,970 to be withdrawn from the securities account of a public customer for which he was the broker, deposited the funds into his own securities account without the customer's knowledge or consent, and used the funds for his own personal benefit or for some purpose other than the benefit of the customer. The complaint also alleges that Wisbiski induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances by inducing public customers to invest funds which he represented would be placed with a "private investment group" and earn 15 percent tax-free annual interest, when, in fact, said investment was nonexistent and Wisbiski used the customer funds for his own purposes. (NASD Case #C8A020036)

Firm Expelled for Failing to Pay Fines and/or Costs in Accordance With NASD Rule 8320

All-Tech Direct, Inc.
Montvale, New Jersey
(June 14, 2002)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)

Darlington, Douglas K.
Morristown, New Jersey
(June 11, 2002)

Dukes, Robert James
Charlotte, North Carolina
(June 18, 2002)

Farber, David I.
Cranbury, New Jersey
(June 14, 2002)

Flowers, Troy
Lemon Grove, California
(June 18, 2002)

Rooney, Patrick W.
Chula Vista, California
(June 24, 2002)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)

Delosh, Rey A.
Clearwater, Florida
(June 14, 2002)

Frankfurter, Patrick N.
Commerce City, Colorado
(June 19, 2002)

Jacks, Roger W.
Kansas City, Missouri
(June 6, 2002)

Melton, Thomas
Visalia, California
(June 19, 2002)

Miranda, Nilsa M.
Chicago, Illinois
(June 19, 2002)

Travale, Stephen D.
Lauderhill, Florida
(June 11, 2002)

Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance With NASD Rule 8320

Aburas, Salam
Berwyn, Illinois
(June 14, 2002)

Blake, Richard A.
DeKalb, Illinois
(June 14, 2002)

Frydrych, Daniel J.
Schaumburg, Illinois
(June 14, 2002)

Green, James C.
Brooklyn, New York
(June 14, 2002)

Individual Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement

The date the registration was suspended is included after the entry. If the individual has complied, the listing also includes the date the suspension was lifted.

Couch, Jr., Thomas M.
Houston, Texas
(June 14, 2002 – July 1, 2002)

NASD Charges Hornblower and Weeks with Violating Settlement by Issuing Research During NASD Ban

Report Found to Contain Misleading Information

NASD charged New York investment-banking firm Hornblower & Weeks with violating a recent NASD-imposed prohibition against issuing research reports. NASD also charged in its complaint that the research report issued by Hornblower contained exaggerated and misleading statements and failed to disclose material facts.

On May 7, 2002, Hornblower reached a settlement with NASD regarding charges related to a research report recommending the common stock of MyTurn.com. NASD found that the report contained baseless projections, misleading and exaggerated statements, and omitted to state important facts. As part of the settlement with NASD, Hornblower was suspended from issuing research reports for six months.

According to the current complaint, Hornblower violated the terms of the prior settlement by issuing a research report relating to American Diversified Group, Inc., in late May 2002. NASD charged that the research report was published on two Web sites, including that of American Diversified, a provider of telecommunication services.

NASD also charged that Hornblower failed to disclose material facts in the research report, including that American Diversified has experienced significant losses, the company has received an opinion from its auditors that there is substantial doubt about its ability to continue as a going concern, and the company has had to rely on loans from its executive officers or directors to pay certain operating expenses.

NASD further charged that the research report made exaggerated, unwarranted, and misleading statements about American Diversified, including that the company "is positioned as a premier provider of communication products and enhanced value-added services..." and "is positioned to exploit the upside potential of the vast expansion of the Internet."

NASD Suspends and Sanctions Trader for Marking the Close; Issues Cautionary Note Prior to Russell 2000 Rebalance

NASD suspended Alan M. Remer for four months for market manipulation by “marking the close” on three separate occasions. Remer was also fined \$7,500.

“Marking the close” is a form of market manipulation. The practice involves attempting to influence the closing price of a security by executing purchase or sale orders at or near the close of normal trading hours. Such activity can artificially inflate or depress the closing price for the security and can affect price of “market-on-close” orders. On three occasions, Remer received a market-on-close sell order that required him to purchase a block-sized order of a security at the price of the last trade executed during normal business hours. In each instance, Remer executed the last trade himself and did so at an artificially low price. As a result, Remer was able to purchase the market-on-close block from his customer at the artificially low price established by his last trade.

Effects on Index Rebalancing

The practice of “marking the close” will have a disproportionately adverse impact when it occurs on an expiration Friday or on an index rebalancing day, such as the Russell 2000 Index rebalancing, which takes place on June 28, 2002. On rebalancing days, securities are added to and deleted from an index. Market makers often receive large market-on-close orders on expiration Fridays and rebalancing days as customers adjust their portfolios to reflect the expiration of options, index options, futures, and the rebalanced index. Accurate pricing at and around the market's close on index rebalancing days is critically important to a fair and orderly rebalancing process.

NASD always monitors for manipulative activity and scrutinized market activity on June 28, 2002, for improper attempts to influence closing prices.

NASD Fines U.S. Bancorp Piper Jaffray and Managing Director \$300,000

Cites Threat to Drop Research Analyst Coverage and Cease Market Making Activities in Retaliation for Not Receiving Investment Banking Business

As part of its ongoing regulatory focus on investment banking and research analyst activities, NASD reached a settlement with U.S. Bancorp Piper Jaffray and a Piper Managing Director, Scott Beardsley, who is the senior banker in the firm's

biopharmaceutical investment banking practice. NASD found that Beardsley threatened Antigenics, Inc., a Nasdaq-listed company, by telling them that Piper would discontinue research coverage and stop making a market in the company's stock if it did not select Piper as lead underwriter for a planned secondary offering.

NASD found that the threats were made to force Antigenics to select Piper as lead underwriter. This type of conduct violates NASD's rule requiring all firms and associated persons to adhere to high standards of commercial honor and just and equitable principles of trade. It also has the potential to undermine competition for investment-banking services.

“Brokerage firms and their executives cannot use threats regarding research activities as a way to obtain investment banking business. The threat to drop research coverage if Piper was not selected as the lead underwriter for a secondary offering was totally inappropriate and undermines the integrity of the market,” said Mary L. Schapiro, NASD's President of Regulatory Policy and Oversight. “It is essential that investors have confidence that decisions firms make about coverage of companies are based on merit and nothing else.”

As part of their settlement with NASD, Piper was censured and fined \$250,000 and Beardsley was censured and fined \$50,000.

NASD found that, on Dec. 27, 2001, the CEO of Antigenics, Inc., informed Beardsley and another Piper investment banker that the company had chosen another firm to serve as lead manager of a planned secondary offering. After speaking with Piper's head of investment banking, Beardsley told the CEO that Piper would either serve as the lead underwriter for the planned secondary offering or would not participate. In the same conversation, Beardsley threatened the CEO that if Piper were not selected as lead underwriter, the firm would drop research coverage of Antigenics and would stop making a market in Antigenics stock. The next day, the CEO of Antigenics wrote a letter to the Chairman of the Board of Piper complaining about the threatened “retaliation.” At this time, Piper rated Antigenics a “Strong Buy.”

On Jan. 2, 2002, Antigenics announced that it planned to offer 4 million shares of stock to the public in a secondary offering, using another investment banking firm as lead underwriter. Piper did not serve in any capacity in that offering, which went effective on Jan. 11. On Jan. 4, two days after Antigenics's announcement of its proposed secondary offering, Piper discontinued its research coverage of Antigenics.

In settling this matter, Piper and Beardsley neither admitted nor denied NASD's findings.